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DEPARTMENT OF THE INTERIOR

National Environmental Policy Act Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of Final Revised Procedures for the Fish and Wildlife Service (Service).

SUMMARY: This notice announces final revised procedures for implementing the **National Environmental Policy Act** (NEPA) for actions implemented by the Fish and Wildlife Service in Appendix 1 in the Department of the Interior's **(Departmental) Manual (516 DM 6)**. The revisions update the agency's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the revisions reflect new initiatives and Congressional mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species **Act** (ESA) permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other **environmental** laws and executive orders.

EFFECTIVE DATE: January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Don Peterson, **Environmental** Coordinator, Fish and Wildlife Service, at (703) 358-2183.

Departmental Manual

516 DM 6 Appendix 1

Fish and Wildlife Service

1.1 NEPA Responsibility

A. The Director is responsible for NEPA compliance for Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on **Environmental** Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC--Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the **environmental** review and analysis of documents prepared by other agencies and **environmental** statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office **Environmental** Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of **Environmental Policy** and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with **516 DM 6.2**.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decisionmakers in his/her area of responsibility contact affected Federal agencies and State, Tribal and local governments when initiating an action subject to an EA or EIS. An individual in each Regional Office, named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office **Environmental** Coordinator, in accordance with **516 DM 6.2**.

1.2 General Service Guidance

Service guidance on internal NEPA matters is found in 30 AM 2-3 (organizational structure and internal NEPA compliance), 550 FW1-3 (in preparation), 550 FW 3 (documenting and implementing Service decisions on Service actions), and 550 FW 1-2 (replacement to 30 AM 2-3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating the NEPA process with other Service programs, **environmental** laws, and executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decisionmaking activities. Service program guidance on NEPA matters must be consistent with the Service **Manual** on NEPA guidance and **Departmental** NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521-523 FW), refuge planning guidance (602 FW 1-3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation **Act** Grant Application Instructions.

1.3 Guidance to Applicants

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service-administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its **environmental** effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the **National Wildlife Refuge System Administration Act** of 1966 (16 U.S.C. 668dd-668ee), the **Refuge Recreation Act** of 1962 (16 U.S.C. 460k-460k-4), and the Alaska **National Interest Lands Conservation Act** of 1980 (16 U.S.C. 410hh-3233, 43 U.S.C. 1602-1784). Inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the **National Wildlife Refuge System**." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the Service **Manual** (602 FW 1-3). Reference to this and other **National Wildlife Refuge System** requirements are found in the Code of Federal Regulations, Title 50 parts 25-29, 31-36, 60, and 70-71. Under these regulations, these protections are extended to all Service-administered lands, including the **National Fish Hatchery System**.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the **Anadromous Fish Conservation Act** (CFDA #15.600); **North American Wetlands Conservation Act**; **Fish and Wildlife Act** of 1956; **Migratory Bird Conservation Act**; **Food Security Act** of

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1985; **Food, Agriculture, Conservation and Trade Act** of 1990; **Partnerships for Wildlife Act** of 1992; and **Consolidated Farm and Rural Development Act**. The Service administers financial assistance to States under the **Sport Fish Restoration Act** (CFDA #15.605), **Wildlife Restoration Act** (CFDA #15.611), **Endangered Species Act** (CFDA #15.612 and 15.615), **Coastal Wetlands Planning Protection and Restoration Act** (CFDA #15.614), and **Clean Vessel Act** of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the **Anadromous Fish Conservation Act** may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the **North American Wetlands Conservation Act** may be obtained through the North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, Department of the

Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under **516 DM 2**, Appendix 2 of the **Departmental Manual**, the **departmental** categorical exclusions cannot be used. In addition to the actions listed in the **departmental** categorical exclusions outlined in Appendix 1 of **516 DM 2**, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential **environmental** impact.

(2) Personnel training, **environmental** interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 **DM 2** and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible **environmental** effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

- i. The installation of fences.
- ii. The construction of small water control structures.
- iii. The planting of seeds or seedlings and other minor revegetation actions.
- iv. The construction of small berms or dikes.
- v. The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with **departmental** and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible **environmental** disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive **Environmental Response Compensation and Liability Act** (CERCLA); section 311(f)(4) of the **Clean Water Act**; and the **Oil Pollution Act**; when only minor or negligible change in the use of the affected areas is planned.

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible **environmental** disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible

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effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse **environmental** effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible **environmental** disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible **environmental** effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in **516 DM** 2, Appendix 1.4. These activities include:

(a) Assessment of civil penalties.

(b) Forfeiture of property seized or subject to forfeiture.

(C) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected

actions where the Service is a cooperating agency.

D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the **environmental** effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of **516 DM 2**.

1.5 Actions Normally Requiring an EA

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the Federal Register and by other appropriate means to notify the affected public.

1.6 Major Actions Normally Requiring an EIS

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the **environmental** effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

Dated: January 13, 1997.

Willie Taylor,
Director, Office of **Environmental Policy** and Compliance, Office of the
Secretary, U.S. Department of the Interior.
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